

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

---

ERA FRANCHISE SYSTEMS, LLC,

Plaintiff,

v.

ORDER

12-cv-594-slc

HOPPENS REALTY, INC., f/d/b/a ERA  
HOPPENS REALTY GROUP and  
MICHAEL S. HOPPENS, an individual,

Defendants,

and

WILSON MUTUAL INSURANCE COMPANY,

Proposed Intervenor.

---

Plaintiff ERA Franchise Systems, LLC, brings this civil action for damages and monetary relief against its former franchisor, Hoppens Realty, Inc. and its owner, Michael Hoppens, for trademark violations, unfair competition, breach of contract and other state law claims. Before the court is the motion of defendants' insurer, Wilson Mutual Insurance Company, to intervene, bifurcate the issues of coverage and liability and stay discovery on the merits pending a determination of Wilson Mutual's duty to defend and indemnify defendants. Dkt. 14.

Under Fed. R. Civ. P. 24(a), a party may intervene as of right if it "claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest." *See also United States v. BDO Seidman*, 337 F.3d 802, 808 (7th Cir. 2003) (intervention under Rule 24(a)(2) requires proposed intervenors to prove four element: "(1) their motions to intervene were timely; (2) they possess an interest related to the subject matter of the . . . action; (3) disposition of the action threatens to impair that interest; and (4) the [parties] fail to represent adequately their interest."). Judges in the court consistently have held that this standard is met by an insurance company that faces potential liability for an insured defendant's actions. *B.A. v. Bohlmann*, 2009 WL 3270124, \*1 (W.D. Wis. 2009); *N.B. v. Wausau School District Bd. of Education*, 2006 WL 6105628, \*1 (W.D. Wis. 2006); *International Paper*

*Co. v. City of Tomah*, 2000 WL 34230089, \*3 (W.D. Wis. 2000). *See also Hagen v. Van's Lumber & Custom Builders Inc.*, 2006 WL 3404772 (E.D. Wis. 2006) (granting motion of insurance company to intervene under Rule 24(a) in order to obtain declaration on duty to defend party). Further, neither plaintiff nor defendants oppose intervention. Accordingly, I will grant ERA Franchise Systems, LLC's motion to intervene.

However, it is *not* this court's general practice to bifurcate and stay the proceedings while the insurance company seeks its declaration. *E.g., Biewer-Wisconsin Sawmill, Inc. v. Fremont Industries, Inc.*, 2007 WL 5517466, \*1 (W.D. Wis. 2007); *Solofra v. Douglas County*, 2005 WL 3059488 (W.D. Wis. 2005); *Wimmer v. Rental Service Corp.*, 2005 WL949328 (W.D. Wis. 2005). A bifurcation and stay seem particularly inappropriate in this case because the plaintiff and defendants oppose any stay of discovery on the merits and plaintiff has agreed not to seek discovery from defendants or Wilson Mutual on insurance coverage issues. Wilson Mutual may file a motion seeking a declaration of insurance coverage issues at any time before summary judgment motions on the merits are due, and the court will strive to rule promptly on the motion. In the meantime, however, discovery shall not be stayed and the court will not bifurcate coverage issues from other issues in this case.

#### ORDER

IT IS ORDERED that the motion of Wilson Mutual Insurance Company to intervene, dkt. 14, is GRANTED, and its motion to bifurcate and stay, dkt. 14, is DENIED.

Entered this 5<sup>th</sup> day of December, 2012.

BY THE COURT:

/s/

STEPHEN L. CROCKER  
Magistrate Judge